

Export Compliance Measures That Work

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A Perspective From a Mid-Sized Company

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The Framework -- Order Matters

10 Practical Steps to Achieve Compliance

1. Management commitment and support
2. Jurisdiction and classification of all products and services
3. Qualified and sufficient export personnel
4. Identification of all activities of your organization and its employees that potentially involve exports
5. Written policies and procedures
6. Training, training and more training
7. Identification of end use, ultimate destination, end user and intermediate users prior to any export action
8. Retention of adequate records
9. Audits
10. Investigation, reporting and resolution of suspected violations



Management Commitment and Support

The Issue

- Commitment and support must flow from top and permeate all management strata -- broken or weak links can cause violations

What Works

- Written corporate policy signed by executive management
- President/CEO videotape introduction on web-based training
- Gaining support from business unit and functional management in conducting training, eliciting employee awareness, implementing corrective action
 - Brief management from top stratum down
 - Advance coordination of export activities with management
 - Written direction from management when requested
 - Making compliance part of merit reviews
- *Insure employees understand that compliance is everyone's responsibility (policies, procedures, announcements by senior officials, annual training)*



Jurisdiction and Classification of Products and Services

The Issue

- Self-determinations should be consistently made, well-reasoned and documented -- you can't comply if you don't know which rules apply
- *Consider view that all ITAR-controlled tech data should be clearly marked and access should be controlled*

What Works

- Self determination template that takes into account ITAR rules (*i.e.*, 22 CFR 120.3) and DDTC's interpretations and precedents
- Determinations made only by authorized export staff
- Objective review of each determination
- Determinations reviewed with each relevant change to USML and CCL



Qualified and Sufficient Export Personnel

The Issue

- There must be a sufficient number of export professionals who are knowledgeable, experienced, diligent, independent and user-friendly -- you can't expect compliance if export work and advice is unavailable, unreliable, or nonobjective

What Works

- Hiring seasoned export professionals with diverse experience and skills
- Assessing knowledge, skill and diligence; determining appropriate scope of responsibility, authority and autonomy
- Sharing diverse knowledge and skills
- Requiring ongoing training
- Creating a reporting structure that ensures independence
- Supplement export staff with "allies" positioned within company departments – *formalize ally positions by investing specific employees with titles and responsibilities in writing*



Identification of All Export-Related Activities

The Issue

- You must understand all of the means by which your organization could be involved in exporting -- for each means you don't identify, you're probably doing nothing that will prevent unauthorized exports

What Works

- Meeting with management of business areas and functional groups; identifying allies and forging relationships within those areas and groups
- Talking with members of your technical/engineering staff – in many companies, they informally perform roles of other departments (*e.g.*, Supply Chain)
- Participation of export staff in business meetings
- *Consider view that unencrypted, electronic transmittals of technical data could constitute "exports"*



Written Policies and Procedures

The Issue

- Policies and procedures are necessary to capture your organization's intention to comply and to establish a documented baseline for ensuring compliance -- without them, you will lack clarity on your employees' responsibilities and requirements to ensure compliance and you will lack a baseline from which an effective audit can be conducted

What Works

- Inserting export compliance into existing policies and procedures (*e.g.*, Public Relations, Supply Chain, Shipping & Receiving, Employee Travel, Security, Human Resources, Training, Intellectual Property, IT/IM)
- Utilizing the familiar format of other policies/procedures of your organization
- Following the familiar distribution scheme of other policies/procedures; considering additional means



Training

The Issue

- Possibly the greatest single tool to achieve compliance -- tell them what they need to know and keep it fresh in their minds

What Works

- Training new employees on their way in the door
- Identifying and training "front line" employees (*e.g.*, engineers, marketing/sales, program managers, supply chain, contracts, security, public relations, shipping & receiving)
- Preparing tailored briefings for "front line" groups
- Conducting agreement/license-specific training
- Developing catchy phrases (*e.g.*, "Know Your Audience") & using them pervasively
- Providing resources and reminders, such as posters, adhesive labels, intranet site
- *Make training an annual requirement; consider customized, web-based training*
- *Consider simplifying main messages – e.g., assume all technical info is export/ITAR-controlled*



Identification of End Use/User and Ultimate Destination Prior to Any Export Action

The Issue

- This information must be ascertained prior to submitting export license/agreement applications or utilizing exemptions and prior to participating in any export-related transaction -- failure can lead to penalties under the Arms Export Control Act and the ITAR

What Works

- Conducting denied party screening
- Obtaining written statements of end use/user
- Scrutinizing transactions and end use/user statements utilizing due diligence checklist that incorporates DDTC's Blue Lantern and BIS's Red Flag indicators



Retention of Adequate Records

The Issue

- Certain records must be retained for prescribed periods -- you will be unable to demonstrate compliance without records

What Works

- Identifying all recordkeeping requirements
- Determining what, if any, additional information will be retained
- Determining who will retain and where
- Ensuring all custodians retain same information in like circumstances
- Identifying consistent format for retaining records to facilitate audits and transitions to new export staff
- Ensure records containing technical data are stored with appropriate access controls -- *this includes off-site, third party storage facilities*



Audits

The Issue

- Internal audits are key to identifying deficient elements of a compliance program -- without audits, you may be unable to identify deficiencies until violations occur

What Works

- Defining export compliance elements to be audited
- Internal or external auditing by qualified, independent personnel
- Auditing on regular basis – *utilize frequent “local/spot” audits” (allies can assist)*
- Incorporating export compliance elements into existing non-export audits (*e.g., timecard floorcheck audits*)
- Incorporating results into compliance program changes or other corrective action



Internal Reporting, Investigation and Resolution of Suspected Violations

The Issue

- No company or compliance program is perfect, and violations will occur -- internal reporting and resolution of suspected violations is instrumental in detecting and correcting compliance program deficiencies and rogue employees; external reporting of violations helps to safeguard national security by identifying unauthorized exports to government personnel who can assess and plan for the impact

What Works

- Ensuring employee awareness of internal reporting mechanism(s) for reporting without retribution (training, posters)
- Utilizing existing internal reporting mechanism(s) – hotline, ethics officer
- Conducting timely and thorough internal investigations
- Determining cause and corrective actions (consider Steps 1-9)
- Timely and comprehensive external reporting – preliminary and final